IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 666 of 2004
WITH
SPECIAL CRIMINAL APPLICATION No.667 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 668 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 669 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 673 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 675 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 676 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 677 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 678 OF 2004
WITH
SPECIAL CRIMINAL APPLICATION NO. 679 OF 2004
AND
SPECIAL CRIMINAL APPLICATION NO. 680 OF 2004
WITH
Criminal Misc. Application No. 6251 of 2004
in
Special Criminal Application No. 666 of 2004
with
Criminal Misc. Application No. 6281 of 2004
in
Special Criminal Application No. 669 of 2004
with
Criminal Misc. Application No. 6277 of 2004
in
Special Criminal Application No. 673 of 2004
with
Criminal Misc. Application No. 6285 of 2004
in
Special Criminal Application No. 675 of 2004
with
Criminal Misc. Application No. 6279 of 2004
in
Special Criminal Application No. 677 of 2004
with
Criminal Misc. Application No. 6272 of 2004
in
Special Criminal Application No. 678 of 2004
with

Criminal Misc. Application No. 6293 of 2004
in
Special Criminal Application No. 679 of 2004
and
Criminal Misc. Application No. 6282 of 2004
in
Special Criminal Application No. 680 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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YASHWANT VENILAL SANGHVI

Versus

SAHDEVSINH DILUBHA ZALA

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Appearance:

1. Special Criminal Application No. 666 of 2004
MR KJ SHETHNA for petitioners
MR YN OZA SR. ADVOCATE WITH MR RC JANI
for Respondent No. 1
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for Respondent No. 2
MR KAMAL TRIVEDI ADDL. ADVOCATE GENERAL
for State of Gujarat.

2. Special Criminal Application No. 667 of 2004
MR KJ SHETHNA for petitioners
MR KS NANAVATI SR. ADVOCATE WITH MR RC JANI
for respondent No.1.
MR PM THAKKAR WITH MR HR PRAJAPATI for

respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

3. Special Criminal Application No. 668 of 2004
MR KJ SHETHNA for petitioners
RULE NOT RECEIVED BACK for Respondent No.1.
MR PM THAKKAR SR. ADVOCATE with MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

4. Special Criminal Application No.669 of 2004
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

5. Special Criminal Application No. 673 of 2004
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

6. Special Criminal Application No. 675 of 2004
MR SB VAKIL SR. ADVOCATE WITH MS. ARCHANA ACHARYA
for petitioners.
MR. YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

7. Special Criminal Application No. 676 of 2004
MR KJ SHETHNA for petitioners.
RULE NOT RECD. BACK for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

8. Special Criminal Application No. 677 of 2004
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

9. Special Criminal Application no. 678 of 2004.
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

10.Special Criminal Application No.679 of 2004.
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

11.Special Criminal Application no. 680 of 2004.
MR KJ SHETHNA for petitioners.
MR YATIN SONI for respondent No.1.
MR PM THAKKAR SR. ADVOCATE WITH MR HR PRAJAPATI
for respondent No.2.
MR AD OZA PUBLIC PROSECUTOR for State.

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/08/2004

COMMON C.A.V. JUDGEMENT

1. In this batch of 11 petitions filed under Article 226 of the Constitution, petitioners against whom First Information Reports have been registered at various police stations of different Districts of State of Gujarat, details of which are shown below in this judgment, for alleged commission of offences mainly under Sections 295-A, 505 (c), 120-B and 114 of IPC, seek to challenge the registration of the said FIRs and have prayed to quash and set aside the said FIRs as also the investigation pursuant thereto, by issuing appropriate writ, order or direction to respondent No.3, State of Gujarat and its subordinate officers.

2. Common questions of law and facts are involved in this batch of petitions and FIRs which are sought to be quashed are filed for alleged commission of similar offences in all the FIRs by disciples of Swadhyaya Group headed by late Shri Pandurang Shastri Athavle. Further, the petitioners are almost common in all the petitions

and, therefore, with the consent of the learned advocates appearing for the parties, all the petitions are heard together and decided by this common judgment.

3. In this batch of petitions, 11 FIRs are filed by the complainants at various police stations of different Districts of State of Gujarat which are sought to be quashed, the details whereof are as under:

| Sr. No. | SCR.A No. of 2004 | CR No. of 2004 | Police Station | Name of complainant | Name of accused |
|---|---|---|---|---|---|
| 1. | 666 | I-115 | S'nagar City | Sahadevsinh Dilubha Zala | Yashwant Venilal Sanghvi and ors. |
| 2. | 667 | I-47 | Kotda Sangani | Majbutsinh Bachubha Jadeja | Yashwant Venilal Sanghvi and ors. |
| 3. | 668 | I-83 | Gandhi- gram | Atulbhai P. Raval | Yashwant Venilal Sanghvi and ors. |
| 4. | 669 | II-3044 | Patan | Prabhas Keshubhai Vaishya | Yashwant Ramjibhai Venilal Sanghvi and ors. |
| 5. | 673 | II-3067 | Keshod | Bhavanbhai Ghelabhai Limbasiya | Yashwant Venilal Sanghvi and ors. |
| 6. | 675 | II-3026 | Chorwad | Najabhai Ramabhai Ram | Yashwant Venilal Sanghvi and ors. |
| 7. | 676 | II-3040 | Patan | Prabhas Keshubhai Vaishya | Yashwant Ramjibhai Venilal Sanghvi and ors. |
| 8. | 677 | I-70 | Kamla- | Rambhai | Yashwant |

baug, Gangabhai Venilal
Porb- Kadachha Sanghvi
andar. and ors.

9. 678 I-290 Pradyu- Nileshbhai Yashwant
man N. Rathod Venilal
Nagar, Sanghvi
Rajkot. and ors.

10. 679 I-65 Upleta Jagmalbhai Yashwant
Nagabhai Venilal
Bheda Sanghvi
and ors.

11. 680 II-3051 Veraval Chhotalal Yashwant
City Raghunath Venilal
Gohel Sanghvi
and ors.

4. In order to appreciate in better perspective and to adjudicate the controversy raised in this batch of petitions, it would be advantageous to refer to the facts stated in the complaint annexed to Special Criminal Application No.666 of 2004 wherein relief sought for is quashment of the FIR registered vide CR No.115 of 2004 at Surendranagar Police Station for alleged commission of the offences under sections 295-A, 505-C, 120-B and 114 of IPC.

5. The averments made in the FIR manifest that the informant Sahadevsinh Dilubha Zala ('the complainant' for short), a resident of Surendranagar, claims to be a disciple of Swadhyaya Parivar, the movement of which was started by late Shri Pandurang Athavle Shastri. It is alleged against the present petitioners, who, according to him, are the associates of "Jagrut Parivar", that they have printed and published a booklet having defamatory writings in the name of "Jagrut Parivar" by hatching conspiracy against Pandurang Athavle Shastri and religious activities of "Swadhyaya Parivar" and spreading the booklet and thereby they have committed offence of abetting each other to hurt religious feelings of "Swadhyaya Parivar" and to raise communal disputes and to create fear among people.

6. It is, inter alia, alleged in the complaint that the complainant is doing religious activities of Swadhyaya Parivar organized by Pandurang Athavle Shastri for the last 18 years. On 10.5.2004, at about 1 P.M. he

received a printed book published by Jagrut Parivar at his address delivered by the postman of the post-office. On reading that booklet, he found that what is stated in the booklet is not the activity of Swadhyaya Parivar. According to him, an abusing language is employed therein mainly about Pandurang Athavle Shastri. On inquiring about the same he came to know that other persons of Swadhyaya Parivar have also received such books by post. It is stated in complaint that such writing in the book hurts the religious feelings of the persons doing and following religious activities of Swadhyaya Parivar. It is further alleged that the worst things are written about religious matters of even Muslim and Sikh in the said book and communal disputes amongst different religious sects and denominations thereof are raised on spread of this book in public. Moreover, all the persons doing activities of Swadhyaya Parivar are humiliated to great extent and thereby their religious feelings have been hurt. Thus Swadhyaya Parivar is defamed by hatching a conspiracy.

7. It is also alleged that petitioner No.1 Yashwant Sanghvi is the publisher, petitioner No.2 Hitendra Gandhi is the editor and petitioner No.3, Mukund Mehta is the Co-Editor of the booklet issued in the name of Jagrut Parivar.

8. It is further alleged that they have printed a bogus book and published the same having quite false and fabricated facts about Pandurang Athavle Shastri and the religious activities of Swadhyaya Parivar from Mumbai and thereby hurting religious feelings of followers of Swadhyaya Parivar and also raised communal disputes and created fear among the members of Swadhyaya Parivar. So the complainant has filed the complaint for the alleged commission of offences against the publisher, editor and co-editor of Jagrut Parivar to take lawful action against them. He has also produced xerox copy of the booklet with his complaint which is published in the name of Jagrut Parivar and the postal cover addressed to his residence. He has further asserted that he has signed the said complaint. He has also asserted that the complaint which is written by him is proper and true and has signed the same after reading and understanding contents thereof.

9. The complaint of Sahadevsinh before Surendranagar Police Station is registered as CR No.I-115 of 2004 for commission of offences as mentioned earlier and it is the registration of this FIR which is sought to be quashed which has given rise to the present batch of petitions.

10. By filing these petitions, the petitioners have, inter alia, stated that respondent No.2, Dhanashree alias Jayshree, w/o. Srinivas Nilkanth Talvarkar alias "Didi", on the face of the record itself does not appear to be a party interested either way but it is clear that it is at her instance and on her instigation that those persons who claim to be the members of Swadhyaya Parivar, and are her staunch followers, have filed these false and frivolous complaints against the petitioners. It is averred that respondent No.2 is the adopted daughter of Pandurang Athavle Shastri and in the later years of his life, Pandurang Athavle Shastri was not keeping so well and respondent No.2 who was increasingly taking part and participating in the activities of Swadhyaya Parivar was having its full control. It is averred that Swadhyaya Parivar which rendered yeomen services in the larger interest of humanity when Pandurang Athavle Shastri was in good health, increasingly lost direction when Pandurang Shastri's health slowly and gradually deteriorated. According to the petitioners, ultimately the situation came to such an impasse that Pandurang Shastri's health became worse and the intellectual class which selflessly participated to further the fundamental causes of the movement were disappointed. It is stated that they could not be the 'yes men' of respondent No.2 who they felt was acting contrary to the spirit of the movement of Swadhyaya Parivar and the letter and spirit of the Trust deed and, therefore, they separated themselves from Swadhyaya Parivar which was headed by respondent No.2. It is stated that in a way they were forced to leave it but, their devotion to the cause never disappeared and therefore they took immense care to see that the sentiments of those who continued to remain the members of Swadhyaya Parivar were not hurt and that Swadhyaya Movement of the said Parivar was not adversely affected. According to the petitioners, some of them could not resist themselves from bringing to the notice of the public at large the maladministration in the functioning of Swadhyaya Parivar movement.

11. It is also asserted that Hon'ble Mr. Justice B.J. Divan, former Hon'ble Chief Justice of this High Court, fired the first salvo and was at pains to write a latter to late Pandurang Athavle Shastri and it was not merely a letter of his resignation as a Trustee of the Trust though he was actively associated with the activities of the Swadhyaya Parivar over a long period of time but there was feelings of the heart burning which he suffered because of the fact that Swadhyaya Parivar movement was on the way of straying from the genuine

cause to which it was wedded. The petitioners have relied upon the letter written by Hon'ble Mr. Justice B.J. Divan and produced it at Annexure B to the petition.

12. It is also asserted that since some of those who had so associated themselves with Swadhyaya Movement separated themselves and kept themselves aloof from the so-called activities of the Swadhyaya Parivar, the respondent No.2 however felt that sudden departure of such devoted persons would turn the needle of suspicion towards her and would create a situation in which the people would begin to look at her with an eye of suspicion and, therefore, she desired that such persons who had devoted for the cause in the past and who separated themselves from the movement should publicly express their regret for having left the movement and apologize in writing to her. It is averred that those who were devoted to the cause wanted to remain devoted to the cause and to the cause alone and any such activity which in their humble opinion was prejudicial to the furtherance of the cause itself should be discouraged and therefore the petitioners did not submit to her dictates and they preferred to act as per the dictates of their consciences.

13. It is also emphasised in the petition that resultant situation was invisible hand of respondent No.2 in instigating and encouraging number of persons for filing false and frivolous complaints, some of which were filed directly in the Courts of law at several places in several Districts and several Talukas, Towns in the Courts of the learned Magistrates and some of which were filed before the Police itself. According to the petitioners, the modus operandi adopted by respondent No.2 and those who blindly follow her was to file false and frivolous complaints and to secure the presence of the accused named therein by hook or crook and when they were so brought before the Courts concerned, to see that crowd gathered together and slogans were raised deprecating their (the accused's) practice and even to assault them. As per petitioners there are victims, the stories of pain suffered by whom, have been published in the newspapers and magazines also.

14. In the petition it is also asserted that two persons i.e., Shankerlal and Vinod Shah were mercilessly beaten by the members of unlawful assembly and the said story was highlighted by a Gujarati magazine, namely, "Abhiyan" whereas one Vinubhai Gajjar was also so assaulted in Jamnagar which was reported in "Samkaalin",

a Gujarati daily newspaper being published from Mumbai.

15. It is asserted by the petitioners that they made it clear that they have neither written nor seen, nor published, nor edited this booklet namely, "Jagrut Parivar" nor associated themselves with the publication, printing and writing of the same but false allegations are made against them and evidence to this effect is created in order to falsely implicate them. It is stated that evidence is created in order to see that by resorting to several complaints at several different places, they are made to run from pillar to post and the sole aim is to give to them a veiled command to bow-down their heads before respondent No.2 and to unconditionally surrender themselves. As per petitioners, the main purpose of launching this prosecution is nothing but an act of monstrosity by creating an atmosphere of fear and terror against them whereas the other oblique purpose is to see that the petitioners are forced to come to the Courts from a distance of several kilometers together at the respective places at which the FIRs against them are launched and to present themselves before the Courts concerned and while they so appear, to mercilessly manhandle them. The petitioners have also given the details of such complaints in the memo of the petition.

16. It is also pointed out that a perusal of the FIRs given in several police stations at different places shows a markable feature, viz., that except the material references to the names of the complainants and the accused, the allegations are practically in the same words and letters which in turn show that it is the invisible hand of respondent No.2 which is working with an oblique motive. It is averred that this is done in order not merely to create an atmosphere of terror in the minds of the petitioners and the like persons, but also to deter them from resisting the attempts on the part of respondent No.2 of using the funds collected for the noblest purpose of religion and social service for purposes far away from such noble purposes. It is also alleged against respondent No.2 that there is a designed attempt on her part by keeping herself behind the scene and falsely instigating the persons to come forward as the complainants and to harass the accused named in several complaints at several places. It is also alleged that the petitioners believe that in order to wreak vengeance upon them and the persons like them, respondent No.2 has manoeuvred to see that this booklet, namely, Jagrut Parivar is brought into existence, circulated amongst the members of the Swadhyaya Parivar who have blind faith in her either in collaboration with them or without that as such and the complainants in their

respective complaints have been instigated to file them. It is also emphasized that four persons, namely, (i) Hitendra Gandhi, who was assaulted and manhandled at Porbandar, (ii) Mukund Mehta, (iii) Janak Bhatt and (iv) Jashvant Sanghvi and all well-wishers like them have published, in the leading Gujarati newspapers of Gujarat and Mumbai, their statements that they are not at all concerned with this booklet Jagrut Parivar and those who had published the same should be condemned and that it is an act of manoeuvreing against them for falsely implicating them in the cases.

17. It is also contended that a case is falsely made out against the petitioners with an ulterior motive and the complainants in several cases are instigated and even the complainant in instant case is no exception. According to the petitioners, to attract the provisions of section 295-A of the Code, a deliberate and malicious intention of the accused named in the complaint, intention of outraging the religious feelings of any class of citizens of India, by works, either spoken or written, or by signs or by visible representations or otherwise is the first essential requirement and with such intention the accused must insult or attempt to insult the religion or the religious beliefs of that class, and these twin requirements should be satisfied to make out a prima facie case but merely because a person "X" or "Y" says that a particular person or persons are responsible for the publication of the offending article, without making out a prima facie case attributing this publication to the accused named in the complaint, contents of the booklet concerned cannot be taken for granted at their face value to make out a prima facie case against the persons who are falsely involved in the instant case.

18. It is also asserted that the petitioners have their own status in the walk of life and are reputed persons and their palms were always parallel to the earth for contributing one thing or the other for the betterment of the cause, namely, the cause of Swadhyaya Parivar. It is the case of the petitioners that the allegations levelled in the complaints make it clear that they are so absurd and inherently improbable that on the basis of them no prudent person can reach a just conclusion that there is sufficient ground for proceeding against the accused. It is also emphasized that the bar of Section 196 of the Code is attempted to be bypassed by the police. Though it is admitted by the petitioners that the bar applies at the stage of taking cognizance of the offence under Section 295-A and under section 505 of

IPC but it is claimed that the very fact that the previous sanction of the Central Government or of the State Government or the D.M., as the case may be, is required before the Court takes cognizance of the offences under section 295-A or Section 505 of the IPC shows and suggests the importance about the application of mind even by the investigating agency before reaching the final stage of submitting the police report.

19. According to the petitioners, it is clear that the criminal proceedings in the case are manifestly malafide and they are maliciously instituted with ulterior motive of respondent No.2 and her associates like respondent No.1 to spite the accused in the instant case due to private and personal grudge of respondent No.2 and therefore also the FIR stands vitiated and the proceedings pursuant thereto are also vitiated.

20. It is also emphasized that instant case is one of the rarest of rare cases in which the FIR in instant case and the proceedings pursuant thereto in the nature of investigation by police be quashed and set at naught because not only innocent persons will come to suffer but the noble cause for which the persons devoted themselves may also come to suffer. It is stated that the proceedings have been initiated by way of wreaking vengeance on the accused and the persons like them, with malicious design of giving a veiled threat of initiating the actions against the persons like the accused and in future to deter them from raising their voice against the activities of respondent No.2 and, therefore, it should be quashed.

21. It is also pointed out that the manner in which the investigation is made by officers of different police stations in different Crime Register numbers covering one and the same booklet, namely, "Jagrut Parivar", also deserves to be deprecated.

22. Lastly it is reiterated that when the contents of the writings are to be appreciated with a view to considering whether the provisions of Section 295-A and Section 505 are attracted, the individual's feelings need not be considered and writing should be read and considered with the objective test whether ordinarily a prudent man would so feel.

23. On aforesaid premises, the petitioners have filed these petitions and claimed the relief to which reference is made earlier.

24. The petitions are hotly contested by all the replying respondents, i.e., (1) respondent No.1/ original complainant, (2) Dhanashree alias Jayshree, wife of Srinivas Nilkanth Talvarkar, respondent No.2, against whom no relief is claimed and (3) State of Gujarat respondent No.3.

25. On behalf of the complainant, reply affidavit has been filed in Special Civil Application No. 678 of 2004 which was agreed to be read and relied upon in all the petitions by the learned advocates appearing for all the parties.

26. Nilesh N. Rathod, Respondent No.1 in Special Criminal Application No. 678 of 2004 who has filed FIR No.CR No.I-290 of 2004 at Pradhyumannagar Police Station, Rajkot, has sworn the affidavit inter alia stating that all the petitioners have conspired to insult by making defamatory statements by publishing, editing, printing, dispatching and circulating the booklet Jagrut Parivar and thereby all the petitioners have hurt the individual feelings of each follower of Swadhyaya Parivar. He has denied all the averments made in the petition and also pointed out the object of Swadhyaya Parivar which, according to him, is to improve the quality of a person, to maintain communal harmony under the principle of "Brotherhood of Men under the Fatherhood of God" and according to him, the petitioners have tried to disturb the communal harmony in the society by making reckless and instigating/provocative statements in the booklet Jagrut Parivar and all the said statements are false and frivolous and made just to create havoc in the society and to earn cheap popularity. It is also emphatically asserted that the petition is premature as the investigation is pending and at present the investigation is at a crucial stage. It is also stated that there are several disputed questions of facts in the petition and therefore the petition under Article 226 of the Constitution of India is not maintainable. It is also asserted that the petitioners have abused the process of law by joining respondent No.2 in these proceedings who has nothing to do with the complaint filed by him. According to him, respondent No.2 is not at all necessary or proper party in these quashing proceedings but the petitioners have impleaded her and mentioned several facts in this petition to prejudice this Court or to earn sympathy of the Court whereas several facts mentioned in the petition are not relevant for deciding this petition for quashing the complaint. It is also asserted that the stand taken by the petitioners in their memo of petition is self-contradictory because according to the deponent,

in the memo of petition the petitioners have specifically mentioned that they have neither written nor seen nor published nor edited the booklet namely Jagrut Parivar which is false and incorrect and on the other hand, in the memo of petition itself at several places the petitioners have mentioned the facts supporting the said magazine and as several questions of disputed facts are involved in the petition, the petition should be dismissed.

27. It is also pointed out that as per catena of decisions of the Supreme Court a quashing petition has to be decided on facts mentioned in the FIR/complaint and appreciation of affidavit and annexures to the quashing petition is not permitted and they are not required to be looked into in a quashing petition. It is also asserted that his feeling was hurt by the petitioners by publishing Jagrut Parivar wherein the petitioners have published offending things against Swadhyaya Parivar as well as "Ashoobh" and therefore he has filed complaint. According to him, feelings, faith and reverence of innumerable followers of Swadhyaya Parivar have been hurt and therefore so many complaints have been filed and therefore cause of action has arisen with each complaint and each complainant has right to file complaint as the act of the petitioners smashes and insults the feelings of each complainant. It is also emphasised that he has no concern with other complaints and he has never consulted other complainants or any person for filing the complaint. It is also emphasized that the investigation is in preliminary and crucial stage and till date the investigating officer has not submitted any report under section 173 of the Code or has not submitted charge sheet and, therefore, the petition be dismissed. According to the deponent, the grounds and submissions of the petitioners with regard to sanction under section 196 of the Code is premature issue in this petition. According to him, under section 190 of the Code, the Magistrate has power to take cognizance of a complaint on police report if a private complaint is filed in the police station. According to him, for investigation and inquiry, sanction is not required because it is the statutory duty and right of a police officer to investigate into a complaint if the complaint prima facie constitutes offence. It is admitted by him that sanction is required at the time of taking cognizance of the complaint, and as the investigating officer has not submitted any report and matter is not pending in any court and till date court has not taken cognizance of the complaint, the submission of the petitioners is premature and not relevant to the facts of the present case. Therefore, according to him,

the point raised by the petitioners with regard to sanction is misleading and premature. It is also pointed out that as per his knowledge and information, the officer investigating into his complaint and the investigating officers of other complainants have recorded statements of several witnesses and recovered certain materials with regard to the alleged booklet titled as "Jagrut Parivar" from the custody and possession of petitioner No.2 and at present investigation is going on. Under the circumstances, according to him, it is not proper to interfere with the statutory right of the investigating officer. Serious personal allegations made against respondent No.2 by the petitioners are denied by him and it is reiterated that respondent No.2 has never instigated him to file the complaint. It is also emphatically mentioned in the affidavit that the petitioners claim that they have not published or edited or are in any way involved in publication or circulation of the said Jagrut Parivar booklet and in that case they need not object to the investigation and should support the investigating officer in investigating the said crime to find out the real culprits because ultimately the investigating agency which is an independent agency will submit report before the concerned Court. It is also asserted that a bare reading of the FIR and other material recovered by the investigating agency show that there is sufficient material for framing charge against the petitioners as mentioned in the FIR. It is also asserted that as per his knowledge and information, the booklet Jagrut Parivar is published, edited and circulated and dispatched by the petitioners and the investigating officer is investigating the same and he has ample material to prove the said facts before the Court and he will submit the report at the time of investigation. According to the deponent, the petitioners have jointly conspired for committing the alleged offences and all the petitioners are directly involved in the conspiracy of the alleged offences. It is stated that there is sufficient material against all the petitioners for commission of offences alleged against them and therefore the petition be dismissed.

28. Lastly it is asserted that all the petitioners are interested to take over the management of Swadhyaya Parivar Trust and as they have failed they have made false and frivolous attempt by making false allegations in the memo of petition and in the booklet Jagrut Parivar but now the petitioners have realised that they have to face prosecution because of their illegal act of preparing, publishing, editing, circulating and

dispatching defamatory material by publishing the booklet Jagrut Parivar and therefore they are saying that they have not published the same and they are not involved in the same which is not correct at all.

29. On the aforesaid premises, it is prayed that the petitions filed by the petitioners may be dismissed.

30. Respondent No.2, Dhanashree alias Jayshree, wife of Srinivas Nilkanth Talvarkar, has also filed affidavit in reply in Special Criminal Application No.666 of 2004, inter alia, denying all the allegations, statements, averments and submissions made in the memo of petition. It is contended that she has been wrongly joined as party respondent No.2 by the petitioners because neither she has filed the FIR nor she is concerned with the proceedings initiated by the complainant against the petitioners in any manner. She has expressed her unawareness about the filing of FIR by the complainant against the petitioners. She has pointed out that no relief is claimed against her nor she is a party concerned to the present proceedings and therefore she is neither necessary nor proper party to the proceedings. She has emphasized that she has been joined as party respondent No.2 just with a view to tarnishing her image and reputation in the society. She has also stated that the law on the subject is well established that for quashing of FIR or criminal complaint what is to be seen is the allegations made in FIR or complaint only and the petitioners herein though well educated and well aware about the position of law, have deliberately joined her as respondent No.2 for oblique motive and with malafide intention.

31. It is stated that the allegations made against her and "Poojya Dadaji" in the memo of petition are baseless, false, fabricated and without any substance. She has also denied the allegation that the complainants are acting at her instance and on her instigation. It is also denied that she is acting contrary to the spirit of the movement of swadhyaya and the letter and spirit of the Trust deeds of various Swadhyaya Parivar Trust in which she is a Trustee. She has also denied the allegations of maladministration in the functioning of the Swadhyaya Parivar Movement. She has stated that though the resignation of Hon'ble Mr. Justice Divan has no relevance for deciding the present petition, the same has been relied on by the petitioners with a view to prejudicing the Court.

32. The incident of Shankerlal B. Thakkar stated in

para 2 (C) of the petition is denied by her. She has strongly denied the allegations made in said para as according to her they are not true and correct. She has denied the allegations made in para 2 (D) as they are not true and correct and they have no relevance and bearing upon the present proceedings. She has also specifically denied the allegations made in para 4 and also ground 20 (1) of the petition.

33. She has pointed out that "Poojya Dadaji" was a world renowned philosopher and a social scientist and his philosophy is based on total and absolute faith in the Supreme Creator; God's indwelling presence in the human beings and all other creation in the Universe. According to her, he developed theory of Swadhyaya, which means a process of self-transformation and social transformation simultaneously. She has stated that through various socioeconomic experiments, he has brought the people belonging to the socially and economically backward classes into the mainstream of the society and as the experiments/projects conducted under Swadhyaya cover diverse activities and the entire world has acknowledged his accomplishment and achievements, he was honoured by many national and international awards.

34. She has stated that she is deeply involved with Swadhyaya Parivar and she has dedicated herself fully and religiously to Swadhyaya Parivar work according to revered Dadaji's vision and methods since many years. She has asserted that she is carrying the message of Swadhyaya in the remotest corners of India and abroad and she has been awarded the "Lok Shikshak Puraskar" and she has represented Swadhyaya work in various national and international forums.

35. She has averred that the activities of Swadhyaya Parivar are going on since 1942 and Swadhyaya has been working only for upliftment of mankind and is based on Shreemad Bhagwad Geeta and Vedic culture. According to her, this movement is not based on any monetary consideration and the persons involved in this movement are never given any place of prominence on the basis of money, power or position. She has stated that the activities of Swadhyaya Parivar which have been going on continuously, consistently and unceasingly for the last more than sixty years, have brought about drastic change in the lives of lacs of people of not only India but also of the people of various countries of the world. She has also averred that in the State of Gujarat this activity has been going on in more than 10,000 villages for the last many years.

36. She has stated that the activities of Swadhyaya Parivar is ever expanding and Swadhyaya Parivar is on its right path and it has not lost its direction at all. She has reiterated that the petitioners have wrongly joined her as party respondent No.2 for oblique purpose and with malafide intention. She has alleged that the allegations made against "Poojya Dadaji" and her in the petition by the petitioners show evil mind and disgraceful conduct of the petitioners. She has stated that for past many years, when "Poojya Dadaji's" health was good and he was very active, the group of disgruntled elements, which was part of Swadhyaya Parivar then, was involved in such kind of disruptive activities and for this reason it was not possible to accept this handful of people in any way by millions of family members of Swadhyaya Parivar. It is also stated that this disgruntled group of people are unable to accept the fact that even without their being in the Parivar the Swadhyaya activities have been growing by leaps and bounds and hence out of sheer frustration they are attempting such disruptive activities and their intentions are malafide. She has also pointed out that youngsters of other religion also take part in the Swadhyaya activities which are based on Shreemad Bhagwad Geeta and organised by Swadhyaya Parivar.

37. Lastly she has stated that the allegations in the petition are aimed at ripping apart the fabric of religious harmony in the society and it is not only an attempt to harm the reputation of an individual but also an attempt to cause severe damage to the society at large especially in Gujarat where the communal relations are strained and the allegations in the petition have been made in an attempt to sabotage the process to bring about communal harmony in Gujarat. She has expressed her pains and stated that such allegations are painful and not acceptable at all and therefore the petitioners are required to be saddled with heavy costs for making such baseless and false allegations in the petition and such recovered sum may be given to any charitable institution working for the rural development as deemed fit by this Court. She has therefore urged that the petition may be dismissed with costs and her name may be deleted as party respondent No.2 from the petition as she is neither proper nor necessary party to the proceedings.

38. Petitioner Nos.1 and 2 have filed rejoinder affidavit wherein inter alia they have denied all the averments, allegations and assertions made by the complainant in his affidavit in reply to which reference is not required to be made at this stage.

39. Mr. K.J. Shethna, learned counsel of the petitioners, while referring to the averments made in the petitions which are exhaustively narrated by this Court in the foregoing paragraphs of this judgment, contended that there is no prima facie case against the petitioners for commission of the alleged offences as described in the FIRs. It is emphasised by him that the averments made in the petitions are eloquent and speak volumes of nondisclosure of offence but complaints have been filed at various police stations of different Districts of Gujarat State and, therefore, the same deserve to be quashed and set aside. According to him, the petitioners are neither authors nor publishers or printers of the patrika issued in the name of Jagrut Parivar and none of the petitioners have ever hatched conspiracy against Pandurang Dada or religious activities of Swadhyaya Parivar nor they have spread the booklet and they have not committed offence of abetting each other to hurt the religious feelings of Swadhyaya Parivar and to raise communal disputes and to create fear among people.

40. Alternatively, it is also submitted that if it is accepted that the petitioners are authors, publishers and printers of the patrika named Jagrut Parivar then also the contents thereof do not attract the offences as alleged in the FIR. It is asserted by him that Swadhyaya Parivar is neither a religion nor a Sect and, therefore, offences as alleged under sections 295-A and 505 (1) (c) of the IPC have not been made out. According to him, more important thing is to have an intention to insult or attempt to insult the religion of any class and unless intention is present both the sections cannot be attracted and therefore the contents of the patrika published in the name of Jagrut Parivar do not make out a prima facie case for commission of the offences under both the aforesaid sections.

41. It is also emphasised by the learned counsel that as per section 196 of the Code, prior sanction of the State Government or Central Government, as the case may be, to take cognizance of the offence is sine-qua-non. According to him, it is true that so far as the initiation of FIR is concerned, the same cannot be equated with taking of cognizance but in the special facts and circumstances emerging from the record of the case, after recording the FIR, the investigating officer ought to have obtained the sanction before starting investigation. It is argued that notwithstanding the aforesaid fact situation, the investigating officer has not only started investigation but in some cases arrest

is made and remand is obtained which, according to him, is not justified and unwarranted in the facts and circumstances of the case and, therefore, according to him, prior sanction is necessary to start investigation in respect of the FIRs registered at various police stations of different Districts of Gujarat State.

42. According to the learned counsel, the stand taken by respondent No.2 that she is not aware about filing of the complaints cannot be believed because the very fact that in number of talukas of different Districts of Gujarat State complaints have been filed itself shows that invisible hand of respondent No.2 has worked behind it with a view to malign the petitioners. It is also asserted by the learned counsel that the allegations in the FIRs are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. It is also emphasised by the learned counsel that the proceedings are manifestly attended with malafide and maliciously instituted with ulterior motive for wreaking vengeance with a view to spite them due to private and personal grudge. According to him, in instant case, designed attempt to file FIRs at several different places is manifestation of vendetta, grudge and oblique motive by compelling the persons named as accused to run from pillar to post. He also contended that in all probabilities the case is not going to result into conviction and such type of prosecution will make the situation bitter. He also contended that power to quash is wholesome, when the conclusion is reached that if proceedings continue process of law will be abused and ends of justice so require. The learned counsel also contended that if ultimately this Court comes to the conclusion that the FIRs are to be investigated into, then, according to him, it should be investigated into by one common agency and not by separate police stations. He therefore urged that all the complaints deserve to be quashed and hence all these petitions deserve to be allowed.

43. Mr. S.B. Vakil, learned Senior Counsel contended that the FIR can be quashed if it does not disclose any offence. He contended that clever drafting creating illusory cause of action cannot be permitted. The learned counsel contended that FIR should be read meaningfully and when the FIR or any process is sought to be quashed on the ground of abuse of process of law, it should be quashed if it is established. According to him, merely by uttering word "religion" repeatedly at various places in FIR, an activity does not become

religious and activity of Swadhyaya Parivar is not a religious activity. He also emphasised on the expression "religion" and asserted that FIRs are independently and collectively an abuse of process of Court as there is no incitement. It is emphasised by him that filing of repeated FIRs is abuse of process of law and filing of all the FIRs in instant case is abuse of process of law. According to him, 11 FIRs at 9 different towns in Saurashtra have been filed though the accused are residing at Mumbai and the purpose behind it appears to cause harassment to the accused and to intimidate them and to drag them from Mumbai to different places in Saurashtra which would give rise to serious questions of law and order. He also asserted that the petitioners are not the authors of booklet and are neither the publishers nor printers of the patrika which is circulated in the name of Jagrut Parivar. It is also emphasised by him that even if it is assumed that the petitioners are the authors as well as publishers and printers of the patrika, then also the contents of the patrika cannot invoke penal provisions of sections 295-A and 505 (1) (c) of the IPC as according to him, the said penal provisions can be attracted only if religious feelings of any class of citizens are hurt with deliberate and malicious intention of outraging the religious feelings of any class of citizens. It is argued that there is no mens-rea on the part of the petitioners which would attract penal provisions. According to him, therefore, there is no justifiable reason to continue with the investigation of the FIRs which deserve to be quashed and set aside. He therefore urged that these petitions may be allowed by quashing and setting aside the FIRs which are impugned in these petitions.

44. The sum and substance of the submissions canvassed by the learned counsel appearing for the petitioners can be catalogued in following three broad categories:

(i) The petitioners are neither authors, nor printers or publishers of the patrika;

(ii) The contents of the patrika do not attract penal provisions of sections 295-A and 505 (1) (c) of IPC as the activities of Swadhyaya Parivar cannot be termed as religious activities and, therefore, there is no question of deliberate and malicious intention of outraging any religious feelings of any class of citizens;

(iii) The sanction of the State Government envisaged

under section 196 of the Code is required to be obtained at the time of taking cognizance of the offence. However, in instant case, looking to the seriousness of the allegations made in the complaints, investigating officer ought to have obtained sanction of the State Government before proceeding with the investigation.

45. Mr. KS Nanavati, learned Senior counsel appearing for respondent No.1/original complainant also argued the matter at length. According to him, when the FIR is disclosing offences on the face of it, particularly name of the complainant, name of the accused, sections which are applied, role which is played by individual and when particularly booklets are part of the complaint, which are direct assault on the religious feelings and defamatory statements, court should reject the petitions in view of the settled position of law. According to him, no case is made out under Article 226 of the Constitution as the petitioners have not made out any specific case except a bare statement in para 9 of the petition that they have not committed the offence which is a defence to be established at the trial. According to him, in view of the settled position of law remedy is available to petitioners under section 482 of the Code and invocation of jurisdiction under Article 226 of the Constitution by petitioners is abuse of process of court. According to the learned counsel, the petitioners have taken a plea that they are not concerned or connected with the printing and publishing of booklets in question but such a plea cannot be examined by the Court in a petition filed under Article 226 of the Constitution as those are disputed questions of fact and to be proved at trial. It is also asserted by him that this Court cannot assume the role of investigating officer and interfere in the sphere of the investigation. According to him, when the petitioners are denying or disowning publication of the patrika, this Court cannot interfere in the sphere of investigation which is within exclusive domain of police officers and, therefore, this Court should allow the investigating officer to investigate the case and permit the investigating officer to reach to its logical conclusion. It is also emphasised by him that contents of the FIR read with the contents of the two booklets prima facie make out a case of offences both under Section 295-A and/or Section 505 (1) (c) of the IPC. He also asserted that the word "religion" has been widely construed as held by the Supreme Court in catena of decisions. It is also pointed out by him that as per petitioners themselves there are several complaints of assault, which shows that the publication even according

to the petitioners has led to the conflict between two groups which make out a case of investigation under section 505 without in any manner admitting the correctness of the allegations made by the petitioners in the petition against the persons who have filed the complaints and referred to in the petition by the petitioners. The learned counsel also opposed the submission made by Mr. Shethna that in the event of the investigation to be done into the matter the same should be entrusted to one investigating agency instead of different investigating agencies and contended that for every complainant there is a different cause of action. According to him, all the complainants are aggrieved with the contents of the patrika and therefore they have lodged the complaint where they reside or where the cause of action has arisen and as the cause of action has accrued where they received the patrika, the petitioners have committed offence qua every complainant. Lastly it is submitted that the present petitioners have demonstrated an attempt to escape from the regular proceedings which cannot be permitted by this Court in exercise of extra ordinary and plenary powers under Article 226 of the Constitution and therefore all the petitions deserve to be rejected.

46. Mr. Yatin N. Oza, learned Senior Counsel appearing for the complainant contended that the petitioners have suppressed material facts about filing of application before the Courts i.e., like Sessions Court of Greater Mumbai, seeking bail order and, therefore, in view of settled legal position that if a person does not approach the Court with clean hands he is not entitled to any relief, the petitioners who have not disclosed filing of the previous petitions are not entitled to invoke extra ordinary jurisdiction under Article 226 of the Constitution. He further contended that FIR cannot be thwarted at the pre-investigation stage in view of catena of decisions of the Supreme Court and investigation must be permitted to reach to its logical end by allowing the investigating officer to investigate into it. He also asserted that on a fair look at the penal provisions of Sections 295-A and 505 (1) (c) of the IPC vis-a-vis the contents of the offending patrika, there is no manner of doubt that it has outraged the religious feelings of one definite class i.e., followers and disciples of Swadhyaya Parivar headed by late Pandurang Athavle Shastri and now respondent No.2 and, therefore, if it is proved that the petitioners are the publishers and printers of the patrika, penal provisions stand attracted against them. According to him, there is a strong prima facie case against the

petitioners for commission of the alleged offences mentioned in the FIR. He therefore submitted that all the petitions lack merit and deserve to be rejected and it is therefore urged that all the petitions may be rejected.

47. Mr. RC Jani, learned advocate and Mr. Yatin Soni, learned advocate who are advocates on record on behalf of the complainants have also made their submissions. They have also contended the same points which have been argued by Mr. K.S. Nanavati and Mr. Yatin N. Oza, learned senior counsel and therefore it is not necessary to repeat the same herein again in this judgment.

48. Mr. P.M. Thakkar, learned Senior counsel appearing for respondent No.2 contended that respondent No.2 has been wrongly dragged by the petitioners in these proceedings as she has nothing to do with the filing of the complaints. According to him, she has neither engineered nor at her instance the complaints have been filed. According to the learned counsel, it is alleged against respondent No.2 that it is the invisible hand of respondent No.2 behind the filing of various FIRs at various police stations but the said allegation/averment is without any basis and it is merely a bald statement made by the petitioners in their petitions. The learned counsel does not rest here. He also highlighted various pages where her reference is made by making allegation about her invisible hands and contended that respondent No.2 is not concerned with the FIR nor any relief is claimed against her in the petitions. According to him, in the FIR it is not stated that at her instance the said FIR is filed and, therefore, allegations made in the FIRs are required to be investigated into by investigating agency and if found true, necessary consequences will follow. It is also asserted by him that respondent No.2 is wrongly joined as party respondent No.2 only to humiliate her and to tarnish her image and prestige in the society and therefore it is prayed that her name be deleted from the present proceedings and the petitioners may be saddled with heavy cost. It is emphasised that the petitioners/accused are very well educated persons and represented by senior advocates and though the law is settled by the Apex Court that the annexures to the petition which are not part of the FIR cannot be considered for quashing petition, the petitioners have made reckless and irresponsible allegations in the petition without any material and annexed irrelevant materials for the said purpose. According to him, such allegations are made with a view to humiliating and

tarnishing the image of respondent No.2 and for that purpose only she is joined as party respondent No.2. It is argued that not only those allegations are made in the petition but they are made basis for filing quashing petitions and such allegations are read in open court just with a view to humiliating respondent No.2. It is argued that with malafide intention, such allegations are made and therefore the petitioners are not entitled to get any relief as prayed for. It is also pointed out by the learned counsel that no sanction under Section 196 of the Code is required by the police to investigate but it is required only at the time of filing of complaint. It is also asserted by the learned counsel that Swadhyaya Parivar is a class by itself and every member of Swadhyaya Parivar is religiously following the ideology given by the Poojya Dada. According to him, it is their religious feelings, beliefs, faith and emotions attached with Poojya Dada who is not less than the God and as it is not the say of the petitioners that Swadhyaya Parivar is not a sect the question whether religious beliefs of a member of Swadhyaya Parivar is insulted or attempt is made to insult such feelings is a question of fact which requires detailed investigation and trial. It is argued that it is also a matter of investigation and trial whether the act on the part of the accused is with deliberate and malicious intention of outraging the religious feelings and, therefore, all these petitions are required to be rejected. It is also contended that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. It is contended that the petitioners have annexed certain materials for the consideration of this Court for quashing the FIR but those annexures have no direct bearing upon the issue involved nor they are relevant for the purpose of deciding whether the allegations made in the FIR are true or not. It is also contended that different FIRs are registered with different police stations of different Districts of the State wherein complainants are different and witnesses will be different as well as provisions of IPC are not similar in all FIRs and as no prayer is made in the petition to centralise the investigation, nor any prejudice is likely to be caused to the accused if the investigation is allowed to be carried out by concerned investigating officers, direction to handover investigation to one agency should not be given. According to him, such direction will burden the work of one agency and there will be undue and long delay in

completing the investigation and there is no compelling reason to transfer the investigation to one agency. He therefore argued that filing of all these petitions itself amounts to abuse of process of Court as the petitioners have invoked extra ordinary plenary jurisdiction of this Court under Article 226 of the Constitution and therefore all the petitions deserve to be rejected with heavy exemplary costs upon them. He therefore urged to reject all the petitions with heavy cost.

49. Mr. Kamal B. Trivedi, learned Additional Advocate General with Mr. A.D. Oza, learned Public Prosecutor appearing for State of Gujarat contended that since the subject matter of the captioned proceedings is at FIR stage wherein the investigation in some cases has just begun and in other case the same is yet to begin, it will be too premature a stage to interfere in the captioned proceedings alongwith other allied petitions at this stage. It is also asserted that in the case of A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500, the Constitution Bench of the Supreme Court has cautioned that the Code is a parent statute which provides for investigation, inquiry into, and trial of cases and unless there is a specific provision in another statute to indicate a different procedure to be followed, the provisions of the Code cannot be displaced. It is also emphasised by them that at this stage of the proceedings in the present matter there are only allegations and counter allegations whereupon the result of the investigation cannot be anticipated and FIRs may not be quashed on mere plea of malafide. It is also contended by them that criminal prosecution in the present case does not necessarily mean harassment and in the event, the prosecution of this nature is allowed to be continued, it would not be a travesty of justice or any undue prejudice, since ultimately in the event the charge is not proved, the complaint against the petitioners would be dropped. It is also contended by them that when the materials relied upon by the party are required to be proved, no inference can be drawn on the basis of this material to conclude that the complaint cannot be proceeded with and that the Court should not act on annexure to the petition under Article 226 of the Constitution, which cannot be termed as evidence without being tested and proved. It is also contended by them that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection that too in the rarest of rare cases. Lastly it is contended by them that while dealing with the captioned proceedings, in exercise of jurisdiction under Article 226 of the

Constitution, this Court has ample powers to strike the balance in a matter like this where more than one FIR has been filed against the petitioners herein by various complainants at various places and for this purpose, this Court may, if deemed fit, direct the investigation to be conducted by a centralised independent agency i.e., CID (Crime) of the State in all the FIRs filed against the petitioners so as to obviate any likelihood of harassment. According to them, this proposition may be considered as a special case more particularly when there are no allegations against Investigating Officers dealing with the said FIRs since otherwise it may become a precedent in all other cases. They, therefore, urged to pass appropriate orders in light of the aforesaid submissions made by them.

50. This court has considered the arguments advanced by the learned counsels as well as learned advocates on record at length and in great detail. This Court has also perused the averments made in the petitions which are stated on oath, affidavit in reply filed by respondent No.1/ original complainant as well as respondent No.2, the complaints which are impugned in these petitions and judgments cited at the bar.

51. Though several decisions have been cited at the bar by learned counsel appearing for the parties, this Court is of the view that it is not necessary to deal with all of them in detail and burden unnecessarily the judgment which has otherwise become lengthy because the question posed for consideration of this Court has to be decided on the facts and circumstances as emerging from the record of the case.

52. At the outset it be stated that law on the question of quashment of complaint in exercise of powers either under Section 482 of the Code or under Article 226 of the Constitution is no more res-integra in view of the catena of decisions of the Supreme Court. Judgments on this point are legion. However, some of the important basic decisions which have crystallized the law are required to be mentioned at this stage.

53. Since the decision of Privy Council in Khwaja Nazir Ahmed (King Emperor) v. Khwaja Nazir Ahmed (1944) 711 A 203: AIR 1945 PC 18: 1945 (46) Cri LJ 413 and till this day there is existing one salutary principle that in normal circumstances, the law Courts would not thwart any investigation and criminal proceedings initiated must be allowed to have its own course under the provisions of the Code. The powers of the police

ought to stand unfettered to investigate cases where they suspect or even have reasons to suspect the commission of a cognizable offence and the First Information Report (F.I.R.) discloses such offence. The Judicial Committee in the decision of Nazir Ahmed (supra) observed:

> "In their Lordship's opinion, however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then."

54. It is paramount to note however that the observations of Lord Porter in Nazir Ahmed (AIR 1945 PC 18: 1945 (46) Cri LJ 413) stands qualified by inclusion of the following:

> "No doubt, if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

55. The qualified statement of the Judicial Committee

however, stands noted in Sanchaita Investment (State of West Bengal v. Swapan Kumar Guha (1982) 1 SCC 561: (AIR 1982 SC 949: 1982 Cri LJ 819). Incidentally, Sanchaita Investment and subsequent decisions including Bhajan Lal (State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: (1992 AIR SCW 237: AIR 1992 SC 604: 1992 Cri LJ 527) and Rajesh Bajaj (Rajesh Bajaj v. State NCT of Delhi, 1999 Cri LJ 1833: (1999 AIR SCW 881: AIR 1999 SC 1216). In one tune it is stated that if an offence is disclosed the Court will not interfere with an investigation and will permit investigation into the offence alleged to have been committed. If, however, the materials do not disclose an offence, no investigation should normally be permitted.

56. In Sanchaita Investment (supra) the Supreme Court has been candid to record that it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual if the Court on a consideration of relevant materials is satisfied that no offence is disclosed. Therefore in the event the FIR does not disclose an offence, question of continuation of the investigation would not arise, since the same would be an utter abuse of the process of Court and a harassment, which is unknown to law.

57. In Rajesh Bajaj's case (supra) the Supreme Court however, without a contra note detailed the method of construing the document (First Information Report) and stated in para 9 of the judgment as follows:

> "It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic

facts which are absolutely necessary for making out the offence. In State of Haryana v. Bhajan Lal, 1992 AIR SCW 237: (AIR 1992 SC 604: 1992 Cri LJ 527) (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder (para 109 of AIR):

> "We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

(Reported decisions mentioned in above referred to paragraphs 53 to 57 have been taken verbatim from the reported decision of the Supreme Court in the case of S.M. Datta v. State of Gujarat, 2001 AIR SCW 3133.)

58. Keeping in forefront the ratio laid down by the Supreme Court in the above referred to judgment, and turning attention to the factual aspects of the matter, it appears that the petitioners as well as respondent No.1/ original complainant and respondent No.2, Dhanashree were once upon a time belonged to the same group i.e., Swadhyaya Parivar which was headed by late Pandurang Athavle Shastri. With the passage of time, it appears that there were some disputes between the group of petitioners as well as Pandurang Athavle Shastri before his demise. The bitterness that started from that point has reached to the stage of publication of the patrika in the name and style of Jagrut Parivar and circulated to the followers of Swadhyaya Parivar. There is also no dispute that now Swadhyaya Parivar is headed by respondent No.2 after demise of Pandurang Athavle Shastri. There also cannot be any dispute that there are millions of followers and disciplines of Swadhyaya Parivar in State of Gujarat from downtrodden to highly intellectual and educated mass. There are allegations and counter allegations against each other. According to the petitioners they are not the authors, publishers or printers of the patrika Jagrut Parivar. It is done by someone else in their name to create ill-will and

ill-feelings among the followers and disciplines of Swadhyaya Parivar as at one point of time they have opposed about the activities of Swadhyaya Parivar carried out by respondent No.2 who is now head of the family of Swadhyaya Parivar after demise of Pandurang Athavle Shastri. It is alleged by the complainant that they have received offending patrika and their religious feelings are hurt and the said patrika was published in the name of the petitioners from Mumbai which they have received at their respective residence and according to the complainant, their feelings are hurt by reading the contents of the patrika. Therefore their religious feelings are hurt and hence it would attract penal provisions of section 295-A and 505 (1) (c) of the IPC which prompted them to lodge the complaints in various police stations. As alleged by the complainants, the cause of action accrued at the place where they received the said patrika and therefore they have lodged complaints at the same police station which is within their territorial jurisdiction where they reside. Now, therefore, in aforesaid backdrop of the undisputed position, it is a matter of investigation as to who are the authors, printers and publishers of offending patrika and it is the role of the investigating agency and not the role of the Court to decide the same in exercise of powers under Article 226 of the Constitution of India in this petition. On the basis of the averments/allegations and counter averments/allegations and even with the help of annexures filed by the petitioners this Court cannot probe into the question to come to the definite conclusion as to who are the real authors, publishers and printers of this patrika Jagrut Parivar. The contention of the learned counsel of the petitioners that they also hate publication of this patrika and they also join with the complainant in condemning the trick adopted by the authors, printers and publishers of the said patrika and therefore they are not the authors, publishers and printers of the patrika has no merit and substance. By merely joining with the complainants whose feelings have been hurt one cannot decide the issue as to who are the authors, printers and publishers of this patrika. In view of the factual situation and in view of the law laid down by the Supreme Court in catena of decisions, FIR cannot be thwarted at the pre-investigation stage. It is yet not known to this Court who is the author, publisher and printer of this offending patrika Jagrut Parivar which has hurt the feelings of the disciples and followers of Swadhyaya Parivar. Therefore, the contention advanced by the learned counsel of the petitioners to quash the complaints cannot be given any countenance and the investigation pursuant to the filing

of the FIRs is required to be proceeded further.

59. Now this takes me to the second point i.e., whether the contents of the patrika published in the name of Jagrut Parivar attracts penal provisions of sections 295-A and 505 (1) (c) of the IPC. Before embarking upon this issue, it is required to be noted that this Court has repeatedly asked the learned counsel appearing for the petitioners as to whether till the name of the authors, publishers and printers are found out by the investigating agency, this issue should be examined and gone into at this stage. M/s. Shethna and Vakil, learned counsel for the petitioners, were unanimous and consistent in their approach and they have insisted that this Court must examine this issue also by embarking upon the inquiry as to whether the contents of the patrika invoke penal provisions of Sections 295-A and 505 (1) (c) of the IPC. In aforesaid view of the matter, this Court is compelled by the learned counsel of the petitioners to examine this issue.

60. In order to adjudicate the said issue, it would be advantageous to refer to Sections 295-A and 505 (1) (c) of the IPC which are reproduced verbatim as under:

"295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

"505.(1)Whoever makes, publishes or circulates any statement, rumour or report,--

(a) xxxxxxxxxxxxx

(b) xxxxxxxxxxxxx

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community shall be punished with imprisonment which may extend to three years, or with fine, or with both."

61. On fair look at the section 295-A of the IPC, there is no manner of doubt that whenever there is allegation that whoever with deliberate and malicious

intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, is liable to be punished. On having fair look at Section 505 (1) (c) of the IPC, it is abundantly clear that publishers or the maker or the circulator of any statement, rumour or report with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community is liable for punishment.

62. It is also required to be noted that to prove the offence under section 295-A of IPC, the prosecution has to prove the following:

(i) that the accused spoke or wrote the words or made the signs or the visible representations;
(ii) that the accused thereby insulted or attempted to insult the religion or the religious beliefs of a class of citizens of India;
(iii) that the accused did so with the deliberate and malicious intention of outraging the religious feelings of that class.

63. So far as the legislative history of this section is concerned, it is to be noted that it has been introduced by Criminal Law Amendment Act (XXV of 1927), Section 2. The offence under Section 295 A is more serious than the one under section 298. The prosecution must establish that the intention of the accused to outrage was malicious as well as deliberate, and directed to a class of persons and not merely to an individual. What is punishable under this section is not so much the matter of discourse, written or spoken, as the manner of it. If the words used cause persons to feel insulted but were only such as might possibly wound and in fact did so, then there is no offence under this section; if the words used were bound to be regarded by any reasonable man as grossly offensive and provocative, and were maliciously intended to be regarded as such, then an offence is committed. And it is no defence to a charge under this section for any one merely to say that he was writing pamphlet in reply to one written by an adherent of another religion who had attacked his own religion.

64. Similarly, to prove the offence under Section 505 (1) (c) of IPC, the prosecution must satisfy the following ingredients:

(i) that the accused made, published or circulated the statement, rumour or report, in question;

(ii) that he did so with intent to incite, or that the act was likely to incite, some class or community or persons to commit some offences against some other class or community.

65. Having examined the scheme and scope of the penal provisions of Sections 295-A and 505 (1) (c) of IPC, we have to examine whether the contents of the patrika hurt the religious feelings of disciples and followers of Swadhyaya Parivar.

66. On having fair look at the offending patrika, which is in vernacular language, there is no manner of doubt that it has criticized the activities of Swadhyaya Parivar. Not only that it has also criticized the founder of Swadhyaya Parivar late Pandurang Athavle Shastri as well as his successor who is respondent No.2 in these proceedings under whose guidance Swadhyaya Parivar at present is pursuing the religious activities shown by Pandurang Athavle Shastri. Each and every paragraph of this patrika demonstrates criticism of religious activities of Swadhyaya Parivar. Therefore, there is no manner of doubt in coming to the conclusion that the contents of the patrika not only hurt religious feelings of the disciples and followers of Swadhyaya Parivar but it also raises communal disputes and creates fear among the followers and disciples of Swadhyaya Parivar which attracts the penal provisions of section 295-A and 505 (1) (c) of IPC.

67. This court is also called upon to answer one more submission advanced by the learned counsel appearing on behalf of the petitioners that activities of Swadhyaya Parivar is not a religious activity and, therefore, as Swadhyaya Parivar is not a religion or sect, penal provisions cannot be attracted. I am afraid, this submission cannot be accepted as according to me, to attract the penal provisions of Section 295-A, it is not necessary that the person whose feelings have been hurt must belong to a particular religion. It is sufficient that he must be following a particular class whose religious belief has been hurt by the publication of the patrika. Apart from that it is very difficult to give precise definition of "religion".

68. In the case of S.P. Mittal v. Union of India and others, AIR 1983 SC 1, the Supreme Court had an occasion to consider the meaning of religion. In paragraphs 25,

26, 27, 35 and 111, the Supreme court has explained the meaning of religion. In paragraph 26 of the said judgment, the Supreme Court has observed as under:

"26. The Encyclopaedia Brittanica refers to Aurobindo again under the head "Idealism' and says"

"Aurobindo, reinterpreting the Indian Ideaistic heritage in the light of his own Western education, rejected the maya doctrine of illusion, replacing it with the concept of evolution. (sic) Arguing that the "illumination of individuals will lead to the emergency of a divine community". Aurobindo founded the influential Pondicherry Ashram, a religious and philosophical community, and headed it until his death".

69. In the case of Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sghirur Mutt, AIR 1954 SC 282, the Supreme Court has given the precise meaning of religion which is as under:

"(G) Constitution of India, Art.25 - Religion, meaning of.

Words and Phrases - "Religions".

Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress."

70. In view of the settled principles enunciated by the Supreme Court and in view of the activities performed by the disciples and followers of Swadhyaya Parivar which are shown by late Pandurang Athavle Shastri there is no doubt that they are nothing but religious activities. The meaning of Swadhyaya itself denotes that it is a religious activity and it is a sect of Hinduism. The

matter does not rest here. In this connection, it would be advantageous to refer to the letter written by Hon'ble Mr. Justice B.J. Divan, former Chief Justice of this High Court to Shri Pandurang Shastri and respondent No.2 Dhanashree (Didi) which has been annexed to these petitions by the petitioners and heavily relied upon by them wherein it is stated by Hon'ble Mr. Justice Divan that Swadhyaya Parivar is converted into a sect and Pujya Dada is projected as incarnation of God or as God. Therefore, there is no manner of doubt to deduce or in coming to the conclusion that the activity of Swadhyaya Parivar which is one of the sects of Hinduism and its activity is religious activity. Therefore, the contention that Swadhyaya Parivar is not a religion and the activities are not religious activities and therefore the penal provisions of section 295-A cannot be attracted has no substance and the same deserves to be rejected. In aforesaid view of the matter, it is deduced that offending patrika Jagrut Parivar does contain statements which hurt religious feelings of disciples and followers of Swadhyaya Parivar and it has outraged and insulted the religious feelings of the disciples and followers of Swadhyaya Parivar. Therefore, penal provisions can very well be attracted in the facts and circumstances emerging from the record of the case.

71. So far as provisions of section 505 (1) (c) of IPC are concerned, the said provisions are also attracted as the offending publication has incited or is likely to incite, a class or community of persons to commit an offence against any other class or community. Therefore, according to this Court, if during the course of investigation it is established that the petitioners are the authors, publishers or printers of the offending patrika then they are bound to be prosecuted. Therefore, the contention that the contents of the patrika do not invoke penal provisions of Section 505 (1) (c) of the IPC has no merit and deserves be rejected.

72. Before concluding the discussion on this point, it is appropriate to refer at this stage the pronouncement of the Supreme Court in the case of S. Veerabadran Chettiar v. Ramaswami Naicker and others, AIR 1958 SC 1032. In the said case, the Supreme Court had an occasion to consider the interpretation of section 295 of IPC. In paragraphs 6 and 7 of the said judgment, the Supreme Court has observed as under:

"(6) It is regrettable that the respondents have remained ex parte in this Court. The learned counsel for the appellant has urged that

the courts below had unduly restricted the meaning of the words of S. 295, particularly, the words "any object held sacred by any class of persons", and that the words have been used in their fullest amplitude by the Legislature, in order to include any object consecrated or otherwise, which is held sacred by any class of persons, not necessarily belonging to a different religion or creed. In the first place, whether any object is held sacred by any class of persons, must depend upon the evidence in the case, so also the effect of the words "with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion". In this case, the facts alleged in the petition, do not appear to have been controverted, but the learned magistrate, as also the learned Sessions Judge and the learned Judge in the High Court, have thrown out the petition of complaint solely on the ground that the image of God Ganesa, treated by the respondents as alleged by the complainant, could not be said to be held sacred by any class of persons. In the instant case, the insult alleged was by destruction of the image of God Ganesa. Apart from the question of evidence, which had yet to be adduced, it is a well-known fact that the image of Lord Ganesa or any objective representation of a similar kind, is held sacred by certain classes of Hindus, even though the image may not have been consecrated.

(7) The learned Judge in the Court below, has given much too restricted a meaning to the words "any object held sacred by any class of persons", by holding that only idols in temples or idols carried in processions on festival occasions, are meant to be included within those words. There are no such express words of limitation in S. 295 of the Indian Penal Code, and in our opinion, the learned Judge has clearly misdirected himself in importing those words of limitation. Idols are only illustrative of those words. A sacred book, like the Bible, or the Koran, or the Granth Saheb, is clearly within the ambit of those general words. If the courts below were right in their interpretation of the crucial words in S. 295, the burning or otherwise destroying or defiling such sacred books, will not come within

> the purview of the penal statute. In our opinion, placing such a restricted interpretation on the words of such general import, is against all established canons of construction. Any object however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the penal section. Nor is it absolutely necessary that the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons without being worshipped by them. It is clear, therefore, that the courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong. The section has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the court."

73. It is also settled principles of law that for quashing complaint, the complainant need not reproduce verbatim in his complaint all the ingredients of the offence he is alleging nor is it necessary that the complainant to state it in so many words that the intention of the accused was dishonest or fraudulent. It is so held by the Supreme Court in the following decisions:

(i) Rajesh Bajaj v. State NTC of Delhi, AIR 1999 SC 1216.
(ii) M. Narayandas v. State of Karnataka, (2003) 11 SCC 251.
(iii) Union of India v. Prakash P. Hinduja and another, AIR 2003 SC 2612.
(iv) State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691.

74. It is also settled principle of law that in a quashing petition Court need not examine annexures annexed to the petition which have no direct bearing upon the issue involved nor they are relevant for the purpose of deciding whether the allegations made in the FIR are true or not. Hence, such annexures cannot be considered.

It is so held by the Supreme Court in the case of State of M.P. v. Awadh Kishore Gupta (supra).

75. The argument that the FIRs are filed with malafide intention and, therefore, they should be quashed cannot be accepted in view of the decision of the Supreme Court in State of Bihar and another, etc., etc., v. Shri P.P. Sharma and another, etc., etc., AIR 1991 SC 1260. In the said decision, the Supreme Court has held that mere allegations of mala fide against informant and investigating officer cannot be basis for quashing proceedings. Fact that investigating officer while acting bona fide rules out certain documents as irrelevant cannot be a ground to assume that he acted mala fide.

76. From the above discussion, it would be clear that penal provisions of sections 295-A and 505 (1) (c) of the Act are attracted in the present case.

77. This takes me to examine the contention as to whether previous sanction of the State Government or the Central Government as the case may be under section 196 of the Code is required to be obtained immediately on recording of the FIR or is it required to be obtained at the time of filing of the charge-sheet.

78. At the time of oral submissions made by Mr. Shethna, learned counsel of the petitioners, it is submitted that it is true that at the time of taking cognizance of the offence previous sanction of the State Government or Central Government is required if the offence is alleged to have been committed under Sections 295-A and 505 (1) (c) of the IPC. However, he has with all vehemence at his command tried to convince this Court that looking to the seriousness of the matter and as it is a dispute between two groups of one sect, investigating officer ought to have obtained previous sanction of the Central Government before starting the Investigation. In some of the cases, police officers have not only started investigation but arrested the accused and obtained remand as well which according to him, was not justified in the facts and circumstances of the case. With due respect to the learned counsel, Section 196 of the Code does not contemplate that police officer should not start investigation without obtaining previous sanction from the State Government or Central Government. Section 196 of the Code casts a duty on the Court before taking cognizance of the offence that there must be previous sanction of the State Government or Central Government as the case may be. Therefore, in my

view, this submission also is devoid of any merit and cannot be given countenance.

79. In this connection, it is appropriate to refer to the judgment of the Supreme Court in the case of State of Punjab v. Raj Singh and another, AIR 1998 SC 768. In the said judgment, the Supreme Court has laid down that from a plain reading of Section 195 of the Code, it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under section 190 (1) of the Code and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged o have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 of the Code. In M. Narayandas v. State of Karnataka (supra), in para 8, the Supreme Court has observed as under:

> "We are unable to accept the submissions made on behalf of the respondents. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether Section 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh."

Therefore, this contention also cannot be given countenance.

80. On overall view of the matter, this Court is of the considered opinion that since the authorship, printing and publication of the offending patrika Jagrut Parivar is disowned by the petitioners, it is required to be investigated into by the investigating agency and on fair reading of the statements made in the patrika, there is no manner of doubt that offence as provided in sections 295-A and 505 (1) (c) has been prima facie made out. It is also clear that previous sanction under section 196 of the Code does not require at the initial stage, i.e., at the time of investigation. The investigation must be permitted to reach to its logical

end and, therefore, all these petitions deserve to be rejected.

81. The last question which remains to be decided is as to whether the complaints filed at various police stations of different districts of Gujarat State shall be permitted to be investigated into by local agency or it should be assigned to some common centralized agency.

82. In this regard, there is much hue and cry raised by both the sides. According to the learned counsel of the petitioners, it should be assigned to one common agency whereas according to respondents/ original complainants as well as respondent No.2, complaints should be continued to be investigated into by the very agency before whom the FIR is filed. It is contended that different FIRs are registered with different police stations of different Districts of Gujarat State. It is stated that complainants are different and witnesses will be different and provisions of IPC are not similar to all FIRs and when no prayer is made in the petitions to centralize the investigation and no prejudice is likely to be caused to the accused if the investigation is allowed to be carried out by concerned investigating officers, no direction as prayed for should be issued. It is pointed out that it will burden the work of one agency and there will be undue and long delay in completing the investigation and there is no compelling reason to transfer the investigation to one agency. In this connection, Mr. Nanavati has relied upon the decision of the Supreme Court in the case of Narinderjit Singh Sahni and another v. Union of India and others, AIR 2001 SC 3810.

83. Mr. Kamal Trivedi, learned Additional Advocate General appearing for State of Gujarat submitted that in exercise of powers under Article 226 of the Constitution, this Court has ample powers to strike the balance in a matter like this where more than one FIR has been filed against the petitioners herein by various complainants at various places. According to him, for this purpose, this Court may, if deemed fit, direct the investigation to be conducted by a centralised independent agency, i.e., CID (Crime) of the State in all the FIRs filed against the petitioners so as to obviate any likelihood of harassment. In this connection, Mr. Trivedi relied upon a decision of the Supreme Court in the case of State of Bihar and another v. Ranchi Zila Samta Party and another, AIR 1996 SC 1515.

84. In Narinderjit Singh Sahni's case (supra), in

paragraph 62 of the judgment, the Supreme Court has observed as under:

"As regards the issue of a single-offence, we are afraid that the fact-situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reasons to hold it otherwise. The plea as raised also cannot have our concurrence."

According to me, the judgment relied upon by Mr. Nanavati is not applicable to the fact situation of this case. Before the Supreme Court there were different transactions and different finance companies had allegedly cheated depositors. As per said decision, each offence of cheating constitutes a separate offence and each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurement of the financial companies. Since the parties were different and the amount of deposit was also different as also the period for which the deposit was effected, it was held that it has the characteristics of independent transactions. Therefore, the Supreme Court refused to treat the said offences as a single offence of cheating. In the said case no plea for handing over the investigation to a common agency was raised. Therefore, the judgment relied upon by Mr. Nanavati is not applicable to the facts of the present case.

85. In the case of State of Bihar and another v. Ranchi Zila Samta Party (supra) the Supreme Court has observed that where large scale defalcation of public funds, fraudulent transactions and falsification of accounts, to the tune of around Rs.500 crores, came to light in the Animal Husbandry Department of the State of Bihar, the High Court in the exercise of powers under Art.226 in a public interest litigation took the investigation away from the State Police and entrusted it to Central Bureau of Investigation and such power was neither exercised to give any advantage to a political party or group of people nor to cast a slur on the State Police, but was done to investigate corruption in public

administration, misconduct by the bureaucracy, fabrication of official records, and misappropriation of public funds by an independent agency that would command public confidence. The Supreme Court, therefore, declined to interfere under Art.136. However the said investigation was subjected to overall control and supervision of the Chief Justice of the Patna High Court.

86. According to this Court, the judgment pressed into service by the learned Additional Advocate General is applicable to the facts of the present case. In the instant case, FIR has been lodged at various police stations of different Districts of Gujarat State in connection with the same patrika allegedly published by the petitioners. The accused are almost common. Of course, the complainants are different, according to whom cause of action accrued at their respective places mentioned in the complaint. Therefore, according to this court, instead of investigating all these FIRs lodged at different police stations of various talukas of different Districts of Gujarat State by the local agency, if it is investigated by State CID Crime, Gandhinagar, there cannot be any possibility of contradictory views and conclusions with regard to investigation into the FIRs lodged at various police stations of different Districts of Gujarat State. It may happen that local police agency at different talukas may come to contradictory conclusions with regard to the investigation into all the FIRs which may lead to a chaotic situation. Therefore, it is desirable and in the fitness of things and also in the interest of justice that the investigation be conducted by a common agency which according to this Court would be State CID Crime, Gandhinagar which is expected to investigate the complaints very promptly. It may be made clear that these directions shall be considered as a special case more particularly when there are no allegations against the investigating officers dealing with the said FIRs and shall not be treated as a binding precedent in all other cases.

87. It is also required to be noted that the petitioners have alleged against respondent No.2 that it is her invisible hands behind filing of these complaints. According to this court, except the bald statement made by the petitioners against her, there is no corroborative evidence which can lead to the conclusion that she is behind filing of these complaints. It is true that after demise of Pandurang Shastri Athavle she is the head of Swadhyaya Parivar and therefore naturally disciples and followers of Swadhyaya Parivar feel that the contents of the offending patrika are nothing but outrageous and an

insult to their religious feelings as well as defamatory. Respondent No.2 is the head of Swadhyaya Parivar and, therefore, naturally the complainants must have got very high esteem and regard for her. That does not mean that she has provoked the complainants to file these complaints. In aforesaid view of the matter, this Court is of the considered opinion that respondent No.2 has been wrongly dragged into these proceedings and her name is mentioned at various places in the petitions. That itself is suggestive of the fact that the petitioners have grudge against her as she has been declared as the head of Swadhyaya Parivar. This Court deprecate such type of practice of impleading a person against whom no relief is claimed by making reckless allegations against her. Therefore, her name deserves to be deleted from the petitions. Mr. Thakkar, learned counsel has urged to impose heavy cost upon the petitioners for joining her without any excuse or cause. However, this Court does not deem it expedient to accede to his request only on the ground that imposition of cost upon the petitioners would create more bitterness between two groups.

88. The net result of the aforesaid discussion can be culled down as under:

(i) FIRs cannot be thwarted at the pre-investigation stage. They must be permitted to reach to their logical end.

(ii) That a fair look at Sections 295-A and 505 (1) (c) of the IPC penal provisions and contents of the patrika, offence as alleged in the FIR is prima facie made out.

(iii) No prior sanction as envisaged under section 196 of the Code is required at the time of lodging of the FIR or carrying out the investigation but it is required only at the time of filing of the charge-sheet, when the Court takes cognizance;

(iv) Investigation is required to be carried out by common agency i.e., State CID Crime, Gandhinagar. Of course, this shall be considered as a special case and shall not be treated as a binding precedent in any other case.

(v) This Court has deprecated the practice of impleading respondent No.2 against whom no relief is claimed by making reckless allegations against her. Therefore, name of respondent No.2 deserves to be deleted from the petitions.

89. Seen in the above context, the challenge made against the FIRs is found meritless and the petitions lack merit and deserve to be rejected.

90. For the foregoing reasons, all the petitions fail and they are therefore rejected. Rule issued in each petition is discharged. Interim relief granted earlier in the petitions shall stand vacated.

91. On the facts and in the circumstances of the case, it is directed that State CID Crime, Gandhinagar shall forthwith take charge of all the FIRs impugned in this petition which are lodged at different police stations of various Districts of State of Gujarat including whatever material the local investigating agency has collected during investigation made by them so far and start investigation promptly and the final report at the conclusion of the investigation be made to the respective Magistracy in whose territorial jurisdiction the FIRs came to be lodged.

92. It is also directed that the local investigating agency where FIRs came to be lodged shall handover the charge of investigation in respect of all the FIRs lodged in different police stations of various Districts of State of Gujarat together with whatever material they have collected so far to the State CID Crime, Gandhinagar.

93. Registrar of this Court is directed to send a copy of this judgment forthwith to the State CID Crime, Gandhinagar as well as to all the police stations of various Districts of State of Gujarat where the impugned FIRs are lodged so as to enable them to comply with the directions given in this judgment.

94. As the main petitions are rejected, above mentioned Criminal Misc. Applications filed by the original complainants under the provisions of Article 226 (3) of the Constitution of India for vacating the interim relief do not survive and hence they are rejected. Notice issued in each application stands discharged.

(A.M. Kapadia, J.)

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95. The judgment is pronounced in the open Court. M/s. Shethna and Vakil, learned counsel appearing for the petitioners, urge that the petitioners are desirous of approaching higher forum and, therefore, ad-interim

relief granted at the time of issuing rule directing stay of investigation which has remained operative till today may be extended for a further period of six weeks to enable the petitioners to approach the higher forum. The prayer made by the learned counsel of the petitioners is opposed by the learned advocates appearing for the complainants.

96. This Court has considered the prayer made by the learned counsel of the petitioners as well as the objection raised by the learned advocates for the complainants. It may be noted that this Court has considered all the contentions advanced by the learned advocates appearing for the parties in great detail and at great length with regard to the challenge made against the impugned FIRs in the petitions and after considering the impugned FIRs, offending booklet (patrika) and catena of decisions of the Supreme Court on the question of quashment of complaint, this Court has recorded categorical finding that FIRs cannot be thwarted at pre-investigation stage and, therefore, has rejected all the petitions. Therefore, according to this Court, granting of the prayer made by the learned advocates of the petitioners would run counter to the settled principles enunciated by the Supreme Court with regard to quashment of complaint and hence the prayer made by the petitioners cannot be entertained and deserves to be rejected and the same is accordingly rejected.

(A.M. Kapadia, J.)

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